fact that the court will not permit the want of independent recollection to serve as an avenue for the admission of incompetent evidence.

INFANTS—RIGHT OF ACTION FOR INJURY TO UNBORN CHILD.—The plaintiff sued for injuries received 36 days before his birth, through the negligent starting of defendant's car while plaintiff's mother, who was a passenger on said car, was alighting therefrom. It was alleged that the injuries resulted in the plaintiff's being born with a deformity, and with a less than normal nervous and physical condition. *Held,* the plaintiff has no right of action for the said injuries. *Nugent* v. *Brooklyn Heights R. Co.* (1913), 139 N. Y. Supp. 367.

The decision in the principal case is based on the proposition that the relation of carrier and passenger did not exist between the defendant company and the plaintiff *en ventre sa mere,* and therefore that the defendant owed the plaintiff no duty which had been violated. The case of *Walker* v. *Great Northern Ry. Co.,* 28 L. R. (Ir. 1890) 69, which was relied upon in the principal case, refused a recovery under similar circumstances, likewise on the ground that no relation of passenger and carrier existed between the parties. In *Allaire* v. *St. Luke's Hospital,* 184 Ill. 359, 56 N. E. 638, 48 L. R. A. 225, 75 Am. St. Rep. 176, recovery was also refused, but on the ground that the child had no legal existence apart from its mother. (But see the strong dissenting opinion of Mr. Justice BOGGS.) That same conclusion, that the unborn child has no legal existence apart from its mother, was reached in *Dietrich* v. *Northampton,* 138 Mass. 14, 52 Am. Rep. 242. See also *Gorman* v. *Budlong,* 23 R. I. 169, 49 Atl. 704, 55 L. R. A. 118. It is admitted, however, that a child *en ventre sa mere* has a legal existence for many purposes. 1 BLACK., COMM. 130; *The George & Richard,* L. R. 3 Adm. & Ecc. 466; *Nelson* v. *G., H. & S. A. Ry. Co.,* 78 Tex. 621, 11 L. R. A. 391, 14 S. W. 1021; 4 COOLEY'S BLACK., COMM., 197; *Phillips* v. *Herron,* 55 Oh. St. 478, 45 N. E. 720; *Turley* v. *Turley,* 11 Oh. St. 173; *McArthur* v. *Scott,* 113 U. S. 340, 28 L. Ed. 1015, 5 Sup. Ct. 652. The principal case admits that the unborn child was an entity, and that it was not a trespasser, but says the defendant owed it no duty because it was not a passenger. It seems to be still an open question, therefore, whether such an action could be maintained if it did not depend upon the existence of such a relation. For a note on this general subject, see 1 MICH. L. REV. 138.

INSURANCE—APPORTIONMENT AMONG COMPOUND AND SPECIFIC POLICIES.—An owner of a double house held two compound policies insuring the entire house; also one specific policy insuring each part separately. Each policy provided: "If there shall be other insurance * * * the insured shall recover on this policy no greater proportion of the loss sustained than the sum hereby insured bears to the whole amount insured thereon." *Held,* to determine the total insurance on each part of the house, each compound policy should be apportioned between the two parts in proportion to the value of the parts and the result added to the specific policy on that part. *Taber* v. *Continental Insurance Co.,* (Mass. 1913), 100 N. E. 636.

At least three distinct rules, each more or less arbitrary, have been ap-

plied by the courts in apportioning losses between compound and specific policies. COOLEY, BRIEFS, Vol. IV, 3111. The "Vermont" rule, adopted in the principal case, virtually turns each compound policy into a specific policy, and produces the same result as if the compound policies contained a "distributive" clause. To this extent, practically a new contract is made for the parties. *Chandler* v. *Ins. Co.*, 70 Vt. 562; 41 Atl. 502; *Blake* v. *Exchange Mut. Ins. Co.*, 12 Gray 265; *Royall* v. *Hartford Fire Ins. Co.*, 158 Ill. App. 463; *Mayer* v. *Am. Ins. Co.*, 2 N. Y. Supp. 227; See *Ogden* v. *East River Ins. Co.*, 50 N. Y. 388, 10 Am. Rep. 492. The "Connecticut" rule regards the compound policies as insuring each part or item for the full amount of the policy unappropriated when that part is reached, making the adjustment item by item in the order of the greatest loss. The only arbitrary feature of this rule is the order of the adjustment, but even as to this the court was inclined to vary it as justice might demand. *Schmaelzle* v. *L. & L. Ins. Co.*, 75 Conn. 397, 53 Atl. 863, 60 L. R. A. 536, 96 Am. St. Rep. 233; *Grollimund* v. *Germania Ins. Co.*, (N. J. L. 1912), 83 Atl. 1108. See *Page* v. *Sun Ins. Office*, 74 Fed. 203, 33 L. R. A. 249, affirming 64 Fed. 194. The "Cromie" rule applies to cases where the compound policy covers the same item as does the specific policy and in addition other items not covered by specific policies. In the event that loss occurs to both items the compound policy will be first applied to its full value to the items not covered by the specific policy and only what remains will be shared proportionally in the item covered by both policies. *Cromie* v. *Ky. & L. Mut. Ins. Co.*, 15 B. Mon. (Ky.), 432; *Angelrodt* v. *Delaware Mut. Ins. Co.*, 31 Mo. 593; *L. L. & G. Ins. Co. v. Delta Farmer's Ass'n*, 56 Tex. Civ. App. 588, 121 S. W. 599; *Meigs* v. *London Assur. Co.*, 126 Fed. 781, affirmed in 134 Fed. 1021; See *Sherman* v. *Madison Mut. Ins. Co.*, 39 Wis. 104; *Royal Ins. Co.* v. *Roedel*, 78 Pa. 19.

INSURANCE—BURGLARY POLICY.—A "special agreement" contained in the policy provides: "The company shall not be liable, (1) unless there are visible marks upon the premises of the actual force and violence used in making entry into the said premises or exit therefrom." *Held*, this policy does not cover a case of burglary, although admitted to have been accompanied by an assault and a "felonious abstraction" of insured goods, where the entry and exit were made by merely opening an unlocked door. CULLEN, C. J. and HAIGHT, J. dissent. *Rosenthal et al.* v. *American Bonding Co. of Baltimore* (N. Y. Court of Appeals, 1912), 100 N. E. 716, reversing 143 App. Div. 362, 128 N. Y. Supp. 553, which affirmed (SCOTT, J. and INGRAHAM, P. J. dissenting), 68 Misc. 10, 124 N. Y. Supp. 905.

This appears to be the only case in the reports upon the point involved. The special term and the appellate division construed the policy as primarily for indemnity, and after stating that the condition might be considered either as defining the risk, or as a mere evidentiary provision inserted to prevent fraudulent claims in cases where in the absence of witnesses a burglary might be attempted to be established by mere evidence of the loss of goods without other proof of a breaking and entering, adopted the latter interpretation. The justification offered was that the terms of a policy must be con-